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THE FLORIDA LEGISLATURE CAN HELP THE STATE'S ECONOMY BY IMPLEMENTING THE FEDERAL BONUS DEPRECIATION ALLOWANCE

By RANDALL HOLCOMBE

The bonus depreciation allowance will help the Florida economy, and the Florida Legislature should approve language that will make it clear that this change in federal law applies to Florida corporate tax law.

In March 2002, the U.S. Congress passed the Job Creation and Worker Assistance Act of 2002. Among its provisions was a one-time 30 percent bonus depreciation deduction for certain investments, which would reduce the corporate income tax liability of firms taking the deduction. Normally, Florida's corporate tax law mirrors or "piggybacks" federal tax law. The same general rules apply so that businesses do not have to keep two completely different sets of records to file their state and federal corporate income taxes. Florida does require some adjustments to be made to federal taxable income, but these adjustments are made after most of a company's tax calculations have already been made. In 2002, both the Florida House and Senate unanimously passed piggyback legislation (SB 2028) for corporate income taxes, and both Governor Jeb Bush and the Florida House hold the opinion that this legislation applies to the bonus depreciation allowance in the federal Job Creation and Worker Assistance Act of 2002. The general counsel of the Florida Senate disagrees. The issue should not be decided on the legal details, but rather on what would be the best policy for Florida. The bonus depreciation allowance will help the Florida economy, and the Florida Legislature should approve language that will make it clear that this change in federal law applies to Florida corporate tax law.

Part of the disagreement on the bonus depreciation allowance is over technical legal matters and part is a matter of policy. Briefly, the legal technicalities stem from the nature of the federal law and the timing of the votes at the state and federal level. The Florida legisla-

tion piggybacks Florida corporate tax law onto the federal tax code as it was on January 1, 2002. The federal legislation was not passed until March, but it was passed to apply retroactively, leaving open a question about whether the piggybacking passed by the Florida Legislature applies to this federal legislation. In addition, the Florida Senate passed SB 2028 on February 27th prior to the final passage of the federal legislation, while the Florida House passed it on March 14th, after the federal legislation was passed and signed into law by the President. There are legal questions about the retroactive nature of the legislation, as well as the timing of its passage, that cause Gov. Bush and the Florida House to disagree with the Florida Senate over whether SB 2028 incorporates the federal bonus depreciation allowance. If the legislature does not decide the issue, it will probably be litigated and decided by the courts. A better resolution is not to let this policy issue be decided by legal technicalities, but rather to have the legislature resolve it based on what would be good policy for the state.

At the federal level, the issue was decided by an overwhelming bipartisan agreement. The federal legislation was passed by a vote of 85-9 in the Senate and 417-3 in the House. Both of Florida's U.S. Senators voted in favor, as did all but three of Florida's representatives. Rep. Boyd was the only Florida representative to vote against, while Reps. Meek and Wexler were absent and did not vote. Both President George W. Bush and Senate Leader Tom Daschle support this stimulus package. Meanwhile, the Florida Legislature passed its piggyback legislation by votes of 39-0 in the Senate and 112-0 in

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the House.

Despite the broad bipartisan support both of the federal legislation and of the state's policy of piggybacking its corporate tax law onto federal law, the bonus depreciation allowance has now become an issue in Florida's budget negotiations. If Florida piggybacks the federal legislation, corporations operating in Florida stand to gain approximately \$272 million in Florida tax savings over the next two years, in addition to the savings on their federal taxes. This is a relatively small amount in Florida's budget, but some have expressed the concern that this money will come out of education funding. Gov. Bush's answer to this is that education should be funded as a first priority, and any costs from piggybacking this tax provision should compete with lower priority expenditures. This will allow Florida to fund education at acceptable levels and enjoy the benefits of this tax provision.

One factor to consider is that the bonus depreciation allowance in federal law accelerates the ability of companies to take depreciation expenses, but does not increase the total amount of depreciation firms can take. Any additional depreciation taken now with the bonus allowed by federal law will be offset by lower depreciation that can be taken in later years, so if Florida piggybacks this depreciation allowance, lower state corporate tax revenues now will be offset by higher corporate tax revenues down the road. This bonus depreciation allowance was passed by the federal government as a stimulus measure to help speed economic recovery, and the same logic applies to Florida's economy. The argument for piggybacking is especially persuasive when one realizes that revenues given up now, when the economy could use a boost, will be made up in later years.

Incorporating the federal bonus depreciation allowance into Florida's tax code will produce a number of benefits. The benefit of piggybacking Florida's tax code onto the federal tax code is well recognized, and the principle has been unanimously approved by the legislature. By simplifying corporate bookkeeping, businesses located in Florida can reduce their accounting expenses, making Florida's business climate more friendly. The legislature should always be interested in implementing policies that will lower the cost that government

imposes on business. Currently, 27 states have tax laws that automatically make their corporate income taxes conform with federal law, but Florida is not among them, so in this regard Florida is already less business-friendly than most states. While legislating an automatic conforming mechanism would be a worthy goal for the Florida Legislature, right now the legislature should reaffirm the principle of conformity embodied in the unanimously passed SB 2028 by allowing the bonus depreciation allowance. In addition, as the Florida economy emerges from the recession and as the state's tourist industry recovers from the effects of Sept. 11, the added boost from this tax benefit will aid the recovery. Piggybacking this provision into Florida's tax code is good policy.

Looking at the issue from the perspective of state government, there is sometimes the temptation to think that implementing policies like this bonus depreciation allowance would deprive the government of revenues, but this view is shortsighted. Ultimately, government gets all of its revenues from the productivity of the private sector, and the best way to ensure the state government's fiscal health is to pursue policies that keep the private sector healthy and growing. Piggybacking this depreciation allowance into state law would impose a small immediate cost on the state that would be paid back in future years, and meanwhile would lower business accounting costs and provide a boost to the private sector when it could use the boost. The benefits outweigh the costs.

To resolve the differences of opinion on this issue, the first step is to separate the legal technicalities from the policy questions. Regardless of the legal issues, the issue should be decided based on what would be the best policy for Florida. Implementing the federal bonus depreciation allowance would be good policy, both because it maintains conformity between Florida's laws and federal tax laws, and because the economic stimulus would help Florida's economy. Florida's Department of Revenue has drawn up language that completely clarifies the legal technicalities to implement the bonus depreciation allowance. Florida's legislature should approve that language to resolve the issue.

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